

**Title 12.DEPARTMENT OF REVENUE
Division 10—Director of Revenue
Chapter 400—Individual Income Tax**

PROPOSED AMENDMENT

12 CSR 10-400.200 Special Needs Adoption Tax Credit. The director proposes to amend sections (2)(F), (3)(I), (3)(J), (3)(K),(3)(L), (4)(F), add section (2)(H),(3)(M),(3)(N), (3)(O) and deleting section (4)(H).

PURPOSE: This amendment changes the filing due date related to applications for the Special Needs Adoption Tax Credit. This change is being made in response to recently passed legislation.

PURPOSE: Section 135.327, RSMo, provides an income tax credit up to ten thousand dollars (\$10,000) for qualified expenses incurred in the adoption of a special needs child. This rule explains when the tax credit is available and how the individual may claim the credit.

(1) In general, an individual may qualify for a credit for nonrecurring expenses incurred in the legal adoption of a special needs child. The credit may be used to reduce individual income tax. The classification of a child as a “special needs child” is determined by the Children’s Division of the Department of Social Services (Children’s Division).

(2) Definitions of Terms.

(A) Special needs child - As certified by the Children’s Division, a child-placing agency licensed by this state, or a court of competent jurisdiction. This does not include any child who has attained the age of eighteen (18); unless it has been determined the child has a medical condition or handicap that would limit the child’s ability to live independently of the adoptive parents.

(B) Resident special needs child – Special needs child who was a resident of this state, or who was a ward of a resident of this state, at the time the adoption was initiated.

(C) Nonresident special needs child – A special needs child who was neither a resident of this state nor a ward of a resident of this state at the time the adoption was initiated.

(D) Qualified expenses - Reasonable and necessary nonrecurring adoption expenses including attorney fees, court costs, and other directly related expenses not taken as a deduction or credit under any similar provision of federal, state, or local law.

(E) Fiscal year - July 1 to June 30.

(F) Filing period - The filing period for claiming a credit **related to a resident special needs adoption** begins on July 1 of the fiscal year and ends on April 15 of the fiscal year. **The filing period for claiming a credit related to a non-resident special needs adoption begins on July 1 of the fiscal year and ends on [April 15] December 31 of the fiscal year.** If [April 15] the filing period ends on a Saturday, Sunday, or a

holiday, the *[filing period]* **last day for filing** shall *[end on]* **be** the first business day following *[April 15]* **the end of the filing period.**

(H) Approved payment arrangement- a payment plan signed by the taxpayer and submitted to and approved by the Department of Revenue (department) within sixty (60) days from the notice of denial.

(3) Basic Application.

(A) An individual residing in this state who proceeds in good faith to adopt a special needs child may be eligible for an adoption tax credit. The tax credit is limited to the lesser of ten thousand dollars (\$10,000) or the actual amount of qualified expenses incurred in the adoption of each special needs child. The tax credit is available for a total of five (5) years. The five (5)-year period begins when the tax credit is first taken or the adoption is finalized, whichever occurs first, and the years for claiming the tax credit run consecutively.

(B) The lesser of one-half (1/2) of the actual amount of qualified expenses incurred or five thousand dollars (\$5,000) may be used to reduce the income tax on the adoptive parent's individual income tax return for the tax year in which the special needs child is placed in the home. The remaining tax credit may be used to reduce the income tax in the tax year the adoption is finalized.

(C) The adoption tax credit used may not exceed the income tax for the tax year. The portion of the tax credit which exceeds the income tax shall not be refunded but may be carried forward and used against the taxpayer's income tax for the subsequent four (4) tax years from the year the child is placed in the home.

(D) The owner of an adoption tax credit may assign, transfer or sell the credit. To claim the credit, the buyer must provide a statement signed by the seller that includes the names, addresses, and Social Security numbers of the buyer and seller, the date the credit was sold, the amount of tax credit sold, and a copy of the Form MO-ATC completed by the adoptive parents.

(E) The adoption tax credit is subject to the original owner's delinquent income, sales, and use taxes, including interest and penalties.

(F) No credit shall be allowed for that portion of the qualified expenses paid from any funds received under any federal, state or local program.

(G) The credit shall be reduced by an amount equal to the state's cost of providing care, treatment, maintenance and services when:

1. There is no intent to return the child to the adoptive home and the special needs child is placed in foster care or a residential treatment facility, which is licensed by the Division of Family Services, the Division of Youth Services, or the Department of Mental Health; or

2. A juvenile court temporarily or finally relieves the adoptive parents of custody of the special needs child.

(H) Only one (1) ten thousand dollar (\$10,000) credit is available for each special needs child that is adopted.

(I) The cumulative amount of tax credits that may be issued for qualified expenses in any one (1) fiscal year *[cannot exceed]* **shall not be less than \$4,000,000, *[of which]* but may be increased by appropriation in any one (1) fiscal year.** \$2,000,000 may *[only]* be issued for the adoption of resident special needs children. The remaining

\$2,000,000 is available first for credits claimed *[during the first ninety (90) days]* by **December 31** of the fiscal year for the adoption of nonresident special needs children. If less than \$2,000,000 is claimed *[during the ninety (90)-day period]* by **December 31 of the fiscal year** for nonresident special needs children, the remainder is available for credits claimed for the adoption of resident special needs children. If less than the allotted funds are claimed for the resident adoption applications **the remaining amount of unclaimed funds will be available for Children in Crisis tax credits as defined in section 135.327 RSMo.** If the remaining *[credit is]* **unclaimed funds** are not used for the **Children in Crisis**, *[it is]* **the funds** are available for the adoption of nonresident special needs children.

(J) If the total *[credits]* **adoption tax credits** claimed exceed the amount available in either category, the credits will be apportioned *pro rata* among all of the taxpayers in each category who have filed a valid claim within the filing period.

(K) All claims filed after the filing period *[and received before the beginning of the next filing period will be accepted in the order that they are filed until the amount available for that category is depleted. If no funds are available for that category, the claim]* will be denied, and may be refiled during the filing period for the following fiscal year[.] **provided the statute of limitations has not expired.**

(L) In the first year in which the credit is claimed, any taxpayer claiming this tax credit must attach to the individual income tax return a completed Missouri Department of Revenue Form ATC. This form can be accessed from the Department of Revenue's website at [http://www.dor.mo.gov/tax/personal/individual/forms\[/2004\]](http://www.dor.mo.gov/tax/personal/individual/forms[/2004]), under tax credit forms.

(M) After December 31st the director shall calculate the total of all applications received for nonresident special needs adoptions and submit this calculation to the speaker of the House of Representatives, the president pro tempore of the Senate, and the director of the Division of Budget and Planning in the Office of Administration by January 31st of each year.

(N) In the event of a credit denial, due to lack of available funds, the taxpayer will not be held liable for any penalty or interest, provided the balance is paid, or a payment arrangement has been received and approved by the department, within sixty days from the notice of denial.

(O) Any amounts still outstanding sixty days after the denial notice date will be charged interest from April fifteenth of the fiscal year at the rate statutorily provided.

(4) Examples.

(A) A special needs child is placed in the home and the adoption is finalized in 2002. The taxpayer incurred \$15,000 in qualified expenses. The taxpayer has income tax of \$6,000 for the tax year. The individual may use \$6,000 in 2002 and has \$4,000 to carry forward to 2003.

(B) A special needs child is placed in the home in 2002. The adoption is finalized in 2003. The individual incurred \$15,000 in qualified expenses. The individual has income tax of \$6,000 for 2002. Because the credit is limited to 50% of the total credit in the year that the child is placed in the home, the individual may only use \$5,000 in 2002 and has \$5,000 to carry forward to 2003.

(C) A special needs child is placed in the home in 2002. The adoption is finalized in 2004. The individual incurred \$15,000 in qualified expenses. The individual has income tax of \$6,000 for 2002, and may use \$5,000 of credit in that year (50% of the total credit of \$10,000). Because the adoption was not finalized until 2004, the individual has no credit available for 2003, and has \$5,000 available for 2004.

(D) A special needs child is placed in the home in 2002. The adoption is finalized in 2004. The individual incurred \$15,000 in qualified expenses. The individual has income tax of \$3,000 for 2002 and for 2003. The individual may use \$3,000 of the \$5,000 available credit in 2002, \$2,000 of the credit in 2003, and has another \$5,000 available for 2004.

(E) A special needs child is placed in the home in 2002. The adoption is finalized in 2004. The individual incurred a total of \$8,000 in qualified expenses. The individual has income tax of \$3,000 for 2002 and for 2003. The individual may use \$3,000 of the \$4,000 available credit in 2002, \$1,000 of the credit in 2003, and has another \$4,000 available for 2004.

(F) An individual incurred a total of \$10,000 in qualified expenses related to the adoption of a resident special needs child. The individual incurred income tax of \$3,000 in *[2004]* **2006** and filed a *[2004]* **2006** return on April 30, *[2005]* **2007**, after the filing period for the adoption tax credit. *[At the end of the filing period, the aggregate amount of resident adoption tax credit that was claimed was \$1,998,000, and no other resident adoption tax credit claims were filed prior to the individual's return. The individual's credit is limited to the remaining \$2,000 of available credit for the fiscal year ending June 30, 2005, and \$1,000 of the individual's credit will be denied.]* **The claim for credit will be denied since the claim was filed after the filing period. The claim may be refilled in the next fiscal year provided the statute of limitations has not expired.**

(G) The individual incurred a total of \$10,000 of qualified adoption expenses and income tax of \$3,000 for 2004. The individual filed a 2004 return within the filing period to claim the credit. The total claims for the adoption expenses for nonresident special needs children filed within the filing period equaled \$4,000,000. The individual will be approved for a credit of \$1,500 for 2004, 50% of the credit claimed (\$2,000,000 divided by \$4,000,000), and will have \$8,500 of credit available for 2005.

[(H)] A special needs child is placed in the home and the adoption is finalized in 2004. The individual incurred \$15,000 in qualified expenses and had income tax of \$6,000 for the tax year. The individual filed a 2004 return after the end of the filing period, and the cumulative amount of tax credits available for the fiscal year had been reached. The individual's claim for \$6,000 in 2004 will be denied, and the individual has \$10,000 to carry forward to 2005.]

[(I)] **(H)** A car dealer accepts an adoption tax credit as payment for a car. The car dealer may use the adoption tax credit to offset any income tax, subject to the applicable restrictions. No portion of the credit is refundable, but can be carried over for the remaining life of the credit.

[(J)] **(I)** In the year the adoption is finalized and after the tax credit had been sold, a juvenile court temporarily relieved the parents of custody, at a total cost to the state of \$8,000. The credit of \$10,000 will be reduced by the amount of the state's cost in providing care, and the transferee of the credit has \$2,000 available.

~~[(K)]~~ **(J)** A special needs child is placed in the home and the adoption is finalized in 1999. The individual incurred \$15,000 in qualified expenses. The individual has income tax of \$6,000 each tax year. The individual did not claim an adoption tax credit on the individual's 1999 through 2003 returns. The individual may not claim a credit for 2004. However, the individual may file amended returns for any tax year for which the statute of limitations remains open and claim the adoption tax credit.

~~[(L)]~~ **(K)** An individual adopts a special needs child in a foreign country and the adoption was finalized in the foreign country in 1999. The individual incurred \$14,000 in qualified expenses and owed no income tax in 1999, 2000, or 2001, and owed income tax of \$4,000 for 2002. The individual claimed \$4,000 adoption tax credit on the tax return for 2002. The unused \$6,000 of qualified expenses is available to be carried over to 2003, but no further.

AUTHORITY: sections 143.961 and 135.327, RSMo 2000. Emergency rule filed Jan. 7, 2005, effective Jan. 17, 2005, expired July 15, 2005. Original rule filed Jan. 7, 2005, effective July 30, 2005. Amended: Filed

PUBLIC COST: This proposed amendment will cost state agencies or political subdivisions \$22,675.

PRIVATE COST: This proposed amendment will cost private entities \$67,104.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Missouri Department of Revenue, Legal Services Division, Governmental Affairs Bureau, PO Box 475, Jefferson City, MO 65105-0475. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

SMALL BUSINESS IMPACT STATEMENT
PROPOSED RULE
12 CSR 400.200 Special Needs Adoption Tax Credit

1. This rule impacts any small business that pays adoption expenses for an employee. This rule requires small businesses to file a form MO-ATC and provide the required information to claim the credit.
2. Any small business claiming the adoption tax credit will be required to file a form MO-ATC and provide the required information to claim the credit.
3. There are no direct costs related to this rule. The indirect costs are included in the private cost fiscal note and are for recordkeeping and the filing of amended returns to claim the credits. The department believes the cost will be less than \$62,500 annually in the aggregate.
4. The monetary costs to the department of revenue directly related to this rule are included in the public cost fiscal note. These costs total \$9,530 and include costs for processing, apportioning and postage. There are no monetary benefits to the Department of Revenue (DOR) from this rule. The Department of Social Services (DSS) maintains certain data regarding these credits. The DOR cannot determine the monetary costs to DSS. There are no benefits to other state agencies from this rule.
5. The department is not aware of any additional cost savings that could be obtained consistent with the individual income tax obligations of Chapter 143.
6. The rule has been distributed on a list serve subscribed to by many individual income tax filers and practitioners.
7. Federal law allows a credit for adoption expenses not to exceed \$10,630 for 2005. The federal credit is not limited to "special needs" adoptions and does not have a limit on the amount available for resident or non-resident children. The federal credit however, is limited by the taxpayer's adjusted gross income (modified specifically to calculate the limit).

**FISCAL NOTE
PUBLIC COST**

I. RULE NUMBER

Rule Number and Name:	12 CSR 10-400.200 Special Needs Adoption Tax Credit
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Affected Agency or Political Subdivision	Estimated Annual Cost of Compliance in the Aggregate
Missouri Department of Revenue	\$22,675
Missouri Department of Social Services	\$0

III. WORKSHEET

It costs the Department of Revenue \$2.72 to process each adoption tax credit claim. Based on the number of filers claiming the adoption tax credit in FY06 (1,976), the aggregate costs for DOR to process the claims are \$5,375. In addition to the processing costs, apportioning the funds available on all valid claims as required by section 135.327, RSMo will require a TPT III and three TPT II's for a minimum of 1,200 hours for a total of \$16,668. Postage costs for the adjustment notices will total an estimated \$632. Costs for processing, apportioning and postage total \$22,675. The Department of Social Services (DSS) maintains certain data regarding these credits. According to DSS this rule does not change DSS' processes or procedures; therefore, there are no monetary costs to DSS.

IV. Assumptions

The non-resident claims will continue to exceed \$2,000,000 and the supplemental appropriations will not be approved requiring apportionment of the available funds for the category among all valid claims. No apportionment will be required for resident special needs children. Any remaining funds will be applied to the Children in Crisis tax credit and unavailable for non-resident adoption tax credit claims. The funds available for non-resident special needs children must be apportioned among all filers with non-resident special needs adopted children. No filers in the non-resident category will receive the full amount claimed. Adjustment notices will be required for an estimated 800 filers. Salaries for FTE required for processing are based on midrange as of FY2007.

FISCAL NOTE
PRIVATE COST

I. RULE NUMBER

Rule Number and Name:	12 CSR 10-400.200 Special Needs Adoption Tax Credit
Type of Rulemaking:	Proposed Rule

II. SUMMARY OF FISCAL IMPACT

Estimate of the number of entities by class which would likely be affected by the adoption of the proposed rule.	Classification by types of entities which would likely be affected.	Estimate in the aggregate as to the cost of compliance by the affected entities.
1,956	Individuals	\$66,425
20	Businesses, Sole proprietors, LLCs, Partner ships, S-Corporations	\$ 679

III. WORKSHEET

The Department of Revenue received 1,976 amended individual income tax returns from individuals and businesses claiming a special needs adoption tax credit in FY2006. The estimated cost to prepare, file and mail an amended individual income tax return is \$33.96. The total annual aggregate costs for all affected entities are \$67,104.

IV. ASSUMPTIONS

The average hourly rate is \$16.62 and it takes two hours recordkeeping and return preparation to complete an amended individual income tax return claiming an adoption tax credit with mailing costs of \$0.72 each. One percent or less of all tax returns filed claiming the adoption tax credit will be filed by businesses.